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SUBJECT: FOUR OUT OF FIVE KUWAITI LAWYERS AGREE: SYSTEMIC  
LEGAL FLAWS HAMPER JUSTICE

REF: A. KUWAIT 2174

[B](#). KUWAIT 1908

[C](#). KUWAIT 1308

[D](#). KUWAIT 1299

[E](#). KUWAIT 1192

[F](#). 04 KUWAIT 1600

[G](#). 04 KUWAIT 1042

Classified By: Ambassador Richard LeBaron for reasons 1.4 (b) and (d).

[1](#)1. (C) Summary and Comment: An examination of many recent legal cases, discussions with Kuwaiti attorneys of all political stripes, and an overview of basic legal codes and procedures reveals significant flaws in Kuwait's judicial system. According to several lawyers, the system suffers from a combination of inadequate laws, insufficient enforcement of existing laws, a lack of judicial oversight, and the societal problem of "wasta" - influence peddling. An examination of cases in the last year revealed that a significant number of convicted militants and militant supporters have received noticeable courtroom leniency, with few receiving any meaningful jail time. On the other hand, writers and activists have been treated relatively harshly for their written or spoken words, although none have been imprisoned. While there have been enough lenient rulings favoring Islamic conservatives and extremists to suggest the existence of a judicial preference for religious and tribal conservatives, this bias, according to most of the lawyers with whom PolOff met, owes more to a lack of judicial oversight and the presence of wasta than a systematic intent by most magistrates to favor Islamists. Such leniency also exists, in great part, because Kuwait's legal system does not adequately address many internationally-recognized crimes such as membership in a terrorist organization, weapons trafficking, and violent jihad committed in foreign countries. For many suspected criminal actions, there is either no law against these acts or, if one exists, sentencing standards allow for little more than a legal slap on the wrist. The current trial of a large number of jihadists, for which the GOK is requesting harsh sentences, will test this thesis.

[1](#)2. (C) Many in Kuwaiti society recognize that the judicial system is in need of improved laws, training, oversight, and institutional safeguards against corruption. Because neither the obstructive National Assembly nor the Al-Sabah-led government is likely to muster the political will to pursue serious legal reform, it is unlikely that changes will take place in the near term. End Summary and Comment.

#### Overview Of The Judicial System

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[1](#)3. (U) Kuwait's judicial system is based on a combination of Islamic law, English common law, and French and Ottoman civil codes. The current Penal Code was drafted by a group of judges from Egypt, Sudan, Iraq, and France and is heavily derived from French civil code. Its criminal law section is based on Napoleonic law which allows for the loosest interpretation of a suspect's intent of action, a point upon which cases are routinely dismissed in Kuwaiti courts when "intent" to commit a crime is not proven. The Kuwaiti Constitution provides for an independent judiciary and the right to a fair trial. Articles 162-173 of the Constitution outline the general principles of the judiciary. Article 2 of the Kuwaiti Constitution states that "the religion of the State is Islam and the Islamic Shari'a shall be a main source of legislation."

[1](#)4. (U) There are no jury trials in Kuwait and the Amir has the constitutional authority to pardon or commute any sentence. There is also no requirement or tradition for legal precedent on rulings. By law, criminal trials are public unless the GOK determines that the issue is sensitive and necessitates a closed trial. Secular courts allow anyone to testify and the testimony of men and women is considered equal. In family courts, however, the testimony of a man is equal to that of two women.

#### The Kuwaiti Court System

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[1](#)5. (U) Defendants have the right to confront their accusers

and to appeal verdicts. Defendants in felony cases are required by law to be represented in court by an attorney, which the courts provide in criminal cases. Kuwait's Bar Association is required, upon court request, to appoint an attorney without charge for indigent defendants in civil, commercial, and criminal cases. Almost all indigent criminal defendants ask for and receive free counsel.

16. (U) Although there are several divisions of courts to adjudicate civil disputes including traffic, family, and administrative courts, the general Kuwaiti judicial structure through which all criminal cases must pass is a three-tiered system that includes at least one Summary Court and, if a case is contested, up to two levels of appellate courts. (Note: There are several other special courts including the Constitutional Court, which, although empowered to, rarely engages in judicial review. There is also a Martial Court in the event the Amir declares martial law. End Note.)

- (U) Court of First Instance (Al-Mahkamah Al-Kuliya) - As the first level or Summary Court in the system, this court hears all disputes, i.e. all cases examined for the first time, including civil, commercial, administrative, labor disputes, as well as all violent criminal and state security cases. As of October 1995, all judgments were made by a panel of three judges. Both defendants and plaintiffs may appeal verdicts to an appellate court.

- (U) Court of Appeals (Mahkamah Al-Istinaf Al-Aliya) - After a ruling has been made at the first level, any appeal must be referred to this court. It is composed of a three judge-panel appointed by the board of the general assembly of the court. This court may rule not only on whether the law was applied properly, but also on the guilt or innocence of the defendant. Appellate rulings may be further appealed to the Court of Cassation.

- (U) Court of Cassation (Supreme Court of Appeals) (Mahkamah Al-Tameez) - A final appeal can be made to the Court of Cassation which is presided over by a five-judge panel. This court conducts a limited and formal review of cases to determine only whether the law was applied properly.

17. (U) A panel of judges, not a jury, determines the guilt or innocence of a defendant. According to Article 163 of the Constitution, judges are not subject to any authority. However, the Amir appoints all judges and the GOK must approve the renewal of all non-citizen judicial appointments. Kuwaiti judges have lifetime appointments while non-citizen judges, most of whom are Egyptian, serve one-to three-year contracts. Post has heard differing accounts regarding the exact number and citizenship of judges in the Kuwaiti court system. There are at least several hundred judges and roughly half are non-citizens.

#### From Interior to Justice: Misdemeanors and Felonies

18. (C) Both misdemeanor and felony cases begin their journey through the legal system with police officers, followed by routine involvement of investigators, and finally ending up in the hands of the prosecutors. Misdemeanors carry a sentence of less than three years while felonies have a sentence of more than three years. It is the investigating police officer taking the complaint who decides whether or not a case is handled as a misdemeanor or felony according to sentencing guidelines. Misdemeanor cases are dealt with by Interior Ministry investigators and felony cases by Justice Ministry investigators. All investigators and prosecutors have law degrees and police officers are permitted to seek their guidance to determine whether or not a case should be classified as a misdemeanor or felony. When a case reaches the Public Prosecutor's office, it is then fully under the control of the Ministry of Justice -- the Public Prosecutor is an independent agency underneath the Ministry of Justice and is designed to operate as an autonomous body. (Note: According to Sahab Abdalrazik Al Daey, Chief Investigator for the Kuwaiti Police, there can be a problem with corruption because officers are poorly paid. The resulting graft, he explained, routinely leads to the "downgrading" of felony cases to misdemeanor status. End Note.)

#### Pre-Trial Detention

19. (SBU) Once arrested for criminal act, a person can be detained by the police for 20 days without charge. Extensions can be granted by the court in two-week increments, up to a maximum of six months. At most, a suspect can be held for four days at a police station, but thereafter must be transferred to the Central Prison for continued detention and investigation. This scenario applies to all criminal cases handled by the police. During the recent terror case investigations related to the January 2005 shoot-outs, the cases were handled directly by Kuwait State Security (KSS). KSS can hold a suspect for a maximum of four days. If it cannot make a case against the suspect in four

days, it must pass the case to a separate MOI investigator's office or release the accused without charge. If KSS does have sufficient grounds to charge, it then passes the case to the Public Prosecutor's office for trial. (Note: From 1991 to 1995, KSS had the ability to try state security offenses but that ability was abolished after international complaints of unfair trial procedures and standards, particularly as applied to those accused of collaboration with the Iraqi invaders. End Note)

#### Legal Expert: Leniency For Militants Due To Gaps In Law

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10. (SBU) Dr. Faisal Al-Kandari, Assistant Professor of Criminal Law and head of the Criminal Law section at Kuwait University's Faculty of Law Department, told PolOffs that judges need more training, especially, he said, the judges serving on the Court of First Instance. Saying that judges in general need more competency, he remarked "a judge issues sentences depending on his convictions." As to what training was needed for judges, he listed understanding the law, how to consider and arrive at a verdict, comparative law, ethics, and language. He also recommended that routine judicial inspections occur to ensure that judges were doing their jobs properly.

11. (SBU) PolOff raised several examples of recent criminal cases that had been adjudicated in the Kuwaiti courts whereby defendants found guilty of insulting or defaming Islam were sentenced more harshly than defendants found guilty of arms trafficking, possessing illegal weapons, and belonging to militant terror organizations. PolOff inquired whether this perceived imbalance was just a series of discretionary verdicts by individual judges or whether it was representative of the judicial system as a whole. Dr. Faisal remarked that it was an example of the current laws and the way the system works and did not represent the actions of individual judges.

12. (SBU) He added that some cases appear to be influenced by judges, but many are simply revealing the limits of the legal system. He pointed out that the Kuwaiti militants who traveled to some foreign countries and committed violent jihad were not guilty of a violent crime in Kuwait because Kuwait has no law against committing such an action in a foreign country. He said that in order for an action committed in a foreign country to be considered a crime in Kuwait, it must be illegal both in the country in which it was committed as well as in Kuwait. He explained that because there was no legitimate Afghan Government, any militant who committed violent jihad against U.S. or coalition forces in Afghanistan in 2001 and early 2002 committed no crime in the eyes of the Kuwaiti legal system. (Note: Although 20 extremists were convicted on May 8 by the Criminal Court for entering Iraq to fight U.S.-led forces, or providing training to others to fight there, they were not sentenced under a law that bans violent jihad. Five were sentenced for illegally leaving Kuwait with the intention of fighting coalition forces in Iraq. The rest were charged with training others, including teenagers, to use weapons, or receiving weapons training knowing it would serve an "illegitimate purpose." The same court sentenced 3 Kuwaitis to three years in jail for illegally entering Iraq to fight the US-led forces and "disturbing" the relations between the State of Kuwait and a friendly country -- i.e. the U.S. (ref B). End Note.)

#### No Intent, No Crime

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13. (U) The issue of intent, not to be confused with motive, is also paramount in many criminal cases because without proof that a suspect intended to commit a crime, a prosecutor has little or no case. Examples of the difficulties in proving intent are:

- (SBU) Two Kuwait artillery officers were released in March after being detained and arrested for allegedly plotting to attack U.S. military forces in Kuwait during a military exercise in December 2004. Although dismissed from military service, no formal charges were brought against the Kuwaiti Lieutenant Colonel and Captain, and they were released by KSS because of insufficient evidence and the prosecution's inability to prove intent. Despite the fact that the prosecution had evidence of plans and motive, the case was unable to proceed to trial. (Note: The Kuwaiti military has no legal means to try military personnel for crimes and any criminal suspect must be handed over to civilian courts for criminal trial. End Note.)

- (SBU) On December 19, 2004, a 34-year-old Egyptian man who struck and killed with his vehicle two U.S. Army soldiers and injured two others, was initially accused of involuntary manslaughter. The four soldiers were part of a military convoy which stopped in the far right lane of a highway to repair a flat tire on a military truck. The Egyptian driver

claimed he did not see the soldiers prior to hitting them and said he fled the scene because he feared being shot by U.S. soldiers. Although the press released a story earlier this year stating that all charges had been dismissed against the driver because he had no intent to hit the soldiers, the investigation is still ongoing. That said, if no intent is ultimately proven, the driver will almost certainly be released without charge.

- (SBU) In February 2004, a Kuwaiti man physically assaulted and sexually violated his wife with an iron rod. He was originally sentenced in November 2004 to 15 years on charges of physical assault, torture, and molestation. An appeals court overturned the ruling in March 2005 and refrained from passing a sentence against the man citing an ill-defined "willingness to withdraw the case," and the possibility of marital reconciliation. The defendant's lawyer argued, apparently convincingly, that the man did not intend to molest his wife when he sexually violated her and that the charge of molestation means there existed a sexual desire to molest. Since his client did not have this desire, he argued, the defendant was merely acting out of anger over what the defendant claimed was his wife's promiscuous behavior.

#### Some Extremists Receive Leniency...

14. (SBU) While many extremists and suspected militants have been released on minimal bail, they are all required to return to court for their trial at a later date. The more acute examples of judicial leniency, however, come after some of these militants are sentenced lightly or are permitted to avoid serving their sentence for serious crimes by paying only a small fine. It is also the case, in some instances, that the laws of Kuwait are inadequate to prosecute certain crimes.

- (U) Twenty Islamic extremists, including 18 Kuwaitis, were sentenced by the Criminal Court on May 8 in two separate cases for entering Iraq to fight U.S.-led forces, or providing training to others to fight there. Almost all received three-year jail terms and some were only fined. Only one of those sentenced, Kuwaiti Abdullah Matar Al-Shimmari, received eight years in prison, including two years for attempting to enter Kuwait on a forged passport. Most of those sentenced on May 8 were released last year on KD 300 (USD 1,000) bail after being arrested during Kuwait's July 2004 militant crackdown (ref B). Osama Al-Munawer, attorney for 14 of those sentenced said he will appeal the verdict, however he told PolOffs that because sentences for some of the crimes his clients were accused of committing can be as much as 25-year prison terms, he remarked that a three-year sentence compared with a 25-year sentence essentially was an acquittal (ref A).

- (U) Mohsen Al-Fadhli, Maqbul Al-Maqbul, Adil Yousef Ibraheem Bu Hammeed, and Mohammed M. Al-Mutairi were convicted by a Kuwaiti criminal court in February 2003 of fighting against U.S. troops in Afghanistan and smuggling money to Yemen and Saudi Arabia to establish jihad camps. They were sentenced to five years hard labor, a rare punishment. All four were released when their case was overturned on appeal in April 2004 because the actions for which they were tried were committed outside Kuwait and thus not punishable under Kuwaiti law.

- (SBU) Former Secretary general of the Scientific Salafis Hamad Abdullah Al-Ali was convicted in June 2004 of criticizing the Amir of Kuwait, inciting demonstrations, and founding an internet site with tips for making bombs (ref C). He was sentenced to two years in jail, however, the court suspended his sentence and released him after he paid KD 1,000 (approx. USD 3,500). He is currently appealing his sentence by the lower criminal court. (Comment: Hamad Al-Ali's "criminal" actions include both an incitement to violence charge and a written and verbal expression of his opinion against the Amir. It is interesting to note that, of his crimes, the more severe punishment stemmed from his criticism of the Amir, not his rallying of the extremist troops. End Comment.)

- (SBU) Amer Khlaif Al-Enezi, the now deceased militant Imam involved in the January 2005 shoot-outs with Kuwaiti security forces, was arrested in October 2004 for inciting youth to jihad but was released after being found innocent based on a lack of intent to cause harm, despite the existence of a significant amount of evidence that was ignored.

- (U) October 2002 Failaka attack conspirators Suleiman Jamal Al-Kandari and Mohammed Asad Al-Kandari were sentenced to five years in prison for involvement and support to the shooting, including charges for possession of unlicensed firearms and ammunition, and joining an illegal organization. Both sentences were suspended for KD 500 (approx. USD 1,700). Fellow conspirator Ahmed Mohammed Al-Kandari had his

four-year sentence suspended for KD 200 (approx. USD 680) and Ghazi Faisal Al-Tarrah and Ahmad Jamal Al-Kandari were fined KD 5000 (approx. USD 17,000) and KD 2000 (approx. USD 6,800) respectively for their involvement in the attack.

- (U) Ali Abdullah Hamad Al-Hamidi and Khalifa Hilal Hadi Al-Dihani were sentenced by the criminal court in June 2003 for possessing and trafficking in weapons. Al-Hamidi,s seven year sentence was suspended after paying a KD 500 fine (approx. USD 1,700) and Al-Dihani,s three year sentence was suspended for KD 200 (approx. USD 680). Fellow traffickers Ibrahim Mubarak Fahad Al-Ghanim and Talal Hamad Mohammed Al-Faresi were not sentenced but were fined KD 3,000 each (approx. USD 10,000).

...While Tougher Verdicts For Written And Verbal Expression

15. (C) Kuwait's judicial system routinely metes out tough verdicts against those who insult Islam, the State of Kuwait, or the senior-most members of the ruling family. If recent cases are representative, the Kuwaiti judicial system appears more capable of defending against rhetorical attacks on Sunni Islam than prosecuting known violent militants. That said, these defendants have neither spent any time in jail, nor are there any political prisoners in Kuwait.

- (U) The Court of Appeals sentenced Professor of Political Science at Kuwait University Dr. Ahmed Al-Baghdadi to one year in prison for defamation (ref E); his sentence was suspended on payment of a KD 2,000 (approx. USD 6,800) fine. Al-Baghdadi was found guilty of criticizing Education Ministry plans to increase the amount of Islamic culture lessons by removing the music curriculum from government and private schools. The appeals court ruled that he exceeded the limits of his freedom of speech by making statements such as "I'm not afraid of religious or bearded people and I think music is more important than teaching the Holy Qur'an." He further said that he did not want his son to be a religious scholar and also did not want him to have a "possible future in terrorism." Al-Baghdadi claimed that it was the Kuwaiti judges in the appeals court who overturned his original acquittal by Egyptian judges in the lower courts.

- (U) In May 2004, Shi'a fugitive Yasser Al-Habib was sentenced in absentia to ten years in jail for insulting the "Companions of the Prophet." He produced and distributed an audio cassette during Ramadan 2003 that, according to the court, defamed Sunni Islam Caliphs Abu Bakr Al-Siddiq and Omar Ibn Al-Khattab (refs F and G). Al-Habib, who remains at large, was originally sentenced to one year in jail and fined KD 1,000 (approx. \$3,400) on misdemeanor charges for the offense. (Note: Shi'a Muslims accept Ali, the son-in-law of Prophet Mohammed and the fourth Caliph, as Mohammed's rightful successor and disregard his predecessors Abu Bakr and Omar who were the first and second Caliphs after Mohammed's death. Kuwait's press law specifically prohibits the publication of any material that serves to "attack religions" or "incite people to commit crimes, create hatred, or spread dissension among the public." The penalty imposed against Al-Habib is consistent with existing Kuwaiti law. End Note).

- (U) A Kuwaiti women was arrested in March for stepping on her citizenship papers while protesting her lack of political rights. Despite making a public apology for her actions, she has been referred to the general prosecutor who "demanded to impose severe punishment" because of her alleged defiance of Articles 25 and 33 of law 31/1970. (Note: Article 25 of law 31 criminalizes public slander or libel against the Amir and his authority, and disrespect for the Emirate, which is punishable by up to five years in prison. Article 33 of law 31 criminalizes public disrespect of the national flag or the flag of a non-enemy state and is punishable by a sentence of up to three years with a KD 250 fine. The woman's case is still pending. End Note.)

Kuwaiti Attorneys: The Legal System Is Flawed

16. (SBU) PolOff met recently with several trial attorneys, of varying ideological backgrounds, to hear their professional opinions about the judicial system and recent high-profile rulings. All stated that the system has problems, although most did not agree on which elements needed reforming. Some complained that the current laws are insufficient to combat extremism and militants, while others speculated that the judges have too much discretion and too often favor those with similar political or religious beliefs. Only one named the prosecutors as the key systemic flaw.

- (C) Prominent liberal lawyer Imad Al-Saif complained about the conservative political and religious bias of many Kuwaiti judges (ref D). While he believes that the legal system is sufficient, he did stress the need to upgrade some laws to



better combat terror and extremism in the society including criminalizing foreign violent jihad and the public labeling of anyone as a 'kafir,' or infidel, because of the possibility of violence against that person due to some interpretations of the Qur'an. He is, however, far more troubled by the power of influence peddling, or wasta, that is prevalent in the society and the courts and that, in his view, gives a much greater advantage to those with tribal ties and a religiously conservative worldview.

- (C) Dr. Bader Al-Yacoub, moderate attorney for the Arabic news daily Al-Seyassah and for liberal Political Science Professor Ahmed Al-Baghdadi, said that the Islamist influence is very strong throughout the society but that he had never felt an Islamist bias in the courts. He believes there are safeguards against undue influence in the courts, chief among them being that 80 percent of the judges were his students. He told PolOff that the entire legal and judicial system in Kuwait needs reform. He also said that the system of judicial promotions needs to be rewritten and that more courses for public prosecutors awaiting judgeships are needed.

- (C) Dr. Bader also complained that all press-related crimes are automatically considered felonies and not misdemeanors, even though sentences are often below the three-year sentencing guideline the courts use to differentiate the two. Dr. Bader said that in Al-Baghdadi's case, there were two Egyptian judges and one Kuwaiti judge who acquitted him of the charges at the first trial. At the second trial in the appellate court, it was two Kuwaiti judges and one Egyptian who reversed the acquittal sentencing Al-Baghdadi to one year in jail. Dr. Bader, while not necessarily viewing the second ruling as a matter of a conservative court bias -- as Al-Baghdadi did -- said he was surprised by the verdict.

- (C) Mubarak Al-Mutawa, Islamist attorney for firebrand Salafi preacher Hamad Abdullah Al-Ali, was adamant that the judicial system is in need of reform. In response to a question about the existence of political bias in the judiciary he responded that Kuwait is a small country and in Kuwaiti society, the families are "involved." Al-Mutawa nodded when asked if this meant the existence of family and tribal wasta. Al-Mutawa also said he has been the victim of courtroom bias and explained that when a liberal writes negatively about Hamad Al-Ali, it resonates in the courts and can "affect judgments." Regarding the existence of a bias favoring religious conservatives he said that he could not talk anymore about the issue because of possible "consequences." He did stress that reform was needed to separate judges from outside influences.

- (C) Osama Al-Munawer, Islamist defense attorney for most of the suspected extremists and violent jihadists now on trial, told PolOffs that the key problem in the system is the Public Prosecutor's office. He claimed that the prosecutors are anti-Islamist and that some prosecutors receive cash awards for bringing certain cases to trial. He said that while he could not rule out the presence of a bias among judges, he has never seen an example of such corruption. When asked whether he thought the judicial system responds more harshly to anti-Islamic statements than to weapons trafficking or terror-related activities, Al-Munawer replied he wasn't sure but that he does know that in the system there is a three-year sentence for an illegal weapons offense and a five-year sentence for "encroaching upon the honor of Prophet Mohammed."

#### Societal Denial -----

17. (C) Comment: Serious and pragmatic legal reform, which is not being discussed, could go a long way to ending many of the systemic and discretionary flaws in the current system. Unfortunately, another element that is less tangible, but very present, is the apparent denial throughout the society that heinous crimes could be perpetrated by Kuwaitis. Until recently, almost all Kuwaitis considered terrorism "alien" to Kuwait. Even after the January shoot-outs between militant extremists and law enforcement officers, many still believed it stemmed from outside forces and one Kuwaiti contact told PolOff that he heard those captured were mostly Saudis. Because there are fewer than one million Kuwaiti citizens, most of the population is related due to intermarriage, and nearly everyone, at the very least, knows "of" everyone else, there is a discernible "small-town" mentality present. Disbelief that a Kuwaiti could have committed a serious crime stems from considerations such as "he comes from a good family" or "he prays five times a day." This mindset often leads to an attempt to solve problems in extra-judicial ways that have little or no lasting legal consequences. This mentality reaches to the senior-most levels of government and a senior official, in a meeting with EmbOffs, referred to this approach to handling criminals as "the Kuwaiti way."

18. (C) Accounts of some form of violence against domestic workers, rape of women and boys, and other abhorrent crimes fill local newspapers almost every day. PolOffs have rarely

noted cases of this kind finding their way to courtrooms or into the sustained public spotlight -- unlike cases regarding verbal and written statements about Islam. Even when such cases of violence are addressed, they routinely involve at most, the defendant paying a small fine and signing a pledge of good conduct. The sheer volume of incidents per capita compared to the relatively small number that are addressed by the legal system is alarming and almost certainly speaks to more than just the involvement of bad judges, inadequate laws, and wasta. Even reforming the judicial system would likely do little to change this mentality until there is a serious effort by this society to legally and publicly confront violent crimes committed by its citizenry. (Note: The last Kuwaiti to receive the death penalty was hanged along with two Saudis in June 2004 for raping and stabbing to death a six-year old Pakistani girl in 2002. Less than a handful of Kuwaitis have received capital punishment in the past five years, despite the occurrence of dozens of murders and several hundred rapes, all capital cases under Shar'ia law, during the same time period. End Note.) End Comment.

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